

Court File No.: CV-22-00030791-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

AUTOMOTIVE PARTS MANUFACTURERS' ASSOCIATION

Plaintiff/
Moving Party

- and -

JIM BOAK, JOANNE CALLAWAY, HILDA FISHER,
LORI INVERARITY, LEO LUCIO, GIL PONTE, MANBAE SINGH-GALL,
DARLENE THOMPSON and JOHN DOE

Defendants/
Responding Parties

- and -

THE CORPORATION OF THE CITY OF WINDSOR,
ATTORNEY GENERAL OF ONTARIO and THE DEMOCRACY FUND

Intervenors

SUPPLEMENTARY FACTUM OF AUTOMOTIVE PARTS MANUFACTURERS'
ASSOCIATION
(returnable February 18, 2022 at 10:00AM)

Dated: February 17, 2022

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SUPPLEMENTARY FACTUM OF THE PLAINTIFF/MOVINGS PARTY

PART I – OVERVIEW

1. On February 10, 2022, the Plaintiff, Automotive Parts Manufacturers' Association (the "APMA"), brought a Motion *ex parte* for an interim injunction to restrain the Defendants from establishing a blockade, or in any way impeding access, to the Ambassador Bridge in Windsor, Ontario. The Honourable Chief Justice Morawetz adjourned the Motion until noon on February 11, 2022 so that the matter could be brought to the attention of the Defendants.

2. Chief Justice Morawetz heard the Motion on February 11, 2022, and granted an interim injunction (the "**Injunction Order**") effective at 7:00 p.m. on February 11, 2022 whereby the

Defendants, and any other person having notice of the Injunction Order, were restrained and enjoined from impeding or blocking access to the Ambassador Bridge and indirect or direct approaching roadways and access points for a period of ten (10) days.

3. The Corporation of the City of Windsor (the “**City of Windsor**”) and the Attorney General for Ontario (“**Attorney General**”) were added as intervening parties.

4. The APMA has prepared a draft Notice of Action to be issued in accordance with its undertaking to do so pursuant to Rule 37.17 of the *Rules of Civil Procedure* (the “**Proceeding**”).

5. On return of this Motion on February 18, 2022, the APMA is seeking a continuation of the Injunction Order in the form of an interlocutory injunction, which will stay in effect until the disposition of the Proceeding, unless otherwise ordered by the Court.

6. However, the APMA understands that the City of Windsor intends to request that the Proceeding be converted from a contemplated action to an application, and that the Injunction Order continue as a permanent statutory injunction pursuant to s. 440 of the *Municipal Act, 2001*. APMA agrees with this request, but should this request be granted, APMA *may* require an Order relieving it from its obligation to commence a proceeding.

7. In addition to the findings of fact made in the Endorsements dated February 11, 2022 and February 14, 2022, the APMA relies the further evidence put forth by the City of Windsor.

PART II – ISSUE

8. The issue to be decided on this Motion is whether the interim injunction granted on February 11, 2022 continue in the form of a permanent statutory injunction pursuant to s. 440 of the *Municipal Act, 2001* and/or an interlocutory injunction.

PART III – THE LAW AND ANALYSIS

Statutory Injunction

9. Section 440 of the *Municipal Act, 2001*, allows a municipality or a taxpayer to bring an Application to restrain a person from contravening its by-laws. The section reads:

Power to restrain

440. If any by-law of a municipality or by-law of a local board of a municipality under this or any other Act is contravened, in addition to any other remedy and to any penalty imposed by the by-law, the contravention may be restrained by application at the instance of a taxpayer or the municipality or local board.

Municipal Act, 2001, S.O. 2001, c. 25, s. 440.

10. The APMA submits that as the City of Windsor's bylaws, particularly By-law 9148, have been violated by the Defendants, the APMA as a representative Plaintiff for ratepayers, may bring this Motion to restrain the Respondents from contravening the City of Windsor's by-laws.

11. Where a municipal authority (or a ratepayer) seeks an injunction to enforce a by-law which it establishes is being breached, it is not necessary to lead compelling evidence that the injunction is warranted. The courts will refuse the application only in exceptional circumstances.

Newcastle Recycling Ltd. v. Clarington (Municipality), 2005 CanLII 46384 (ON CA) at para 32

12. Where an injunction is sought for the purpose of enforcing a municipal by-law, the traditional test for an injunction should be modified so that the first criterion (serious question to be tried) will be strongly emphasized to the exclusion of the other two criteria (irreparable harm and balance of inconvenience).

Hamilton (City) v. Loucks (2003), 232 D.L.R. (4th) 362 (Ont. S.C.) at paras 24, 28 and 31

Interlocutory injunction

13. Section 101 of the *Courts of Justice Act* states that "[i]n the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted ...where it appears to a judge of the court to be just or convenient to do so." Rule 40.01 states that "an interlocutory injunction or mandatory order under section 101...of the *Courts of Justice Act* may be obtained on motion to a judge by a party to a pending or intended proceeding."

Courts of Justice Act, RSO 1990, c C.43, Section 101

Rules of Civil Procedure, RRO 1990, Reg 194, Rule 40.01

14. The decision to grant an interlocutory injunction is a discretionary one. Injunctions are equitable remedies. The powers of courts with equitable jurisdiction to grant injunctions are, subject to any relevant statutory restrictions, unlimited.

Google Inc. v. Equustek Solutions Inc., SCC 2017 34 at paras 22-23

15. As stated in APMA's initial Factum dated February 10, 2022, the test for an interim/interlocutory injunction requires the moving party to demonstrate that:

- a. There is serious issue to be tried;
- b. Irreparable harm will result if the relief is not granted; and

- c. The balance of convenience favours the moving party.

RJR-MacDonald Inc. v. Canada (Attorney General), [1994] 1 S.C.R. 311 at paras 77-80.

Serious issue to be tried

16. The APMA submits that there is clearly a serious issue to be tried in the case at bar, specifically with respect to whether damages have been suffered, and will continue to be suffered, as a result of the Respondents' nuisance, intentional interference with economic/contractual relations, and other potential torts.

Public Nuisance

17. In *Ryan v. Victoria (City)*, the Supreme Court of Canada described the test for public nuisance as follows:

The doctrine of public nuisance appears as a poorly understood area of the law. 'A public nuisance has been defined as any activity which unreasonably interferes with the public's interest in questions of health, safety, morality, comfort or convenience': see Klar [Klar, Lewis N. Tort Law, 2nd ed. Scarborough, Ont.: Carswell, 1996], at p. 525. Essentially, '[t]he conduct complained of must amount to . . . an attack upon the rights of the public generally to live their lives unaffected by inconvenience, discomfort or other forms of interference': See G. H. L. Fridman, *The Law of Torts in Canada*, vol. I (1989), at p. 168. An individual may bring a private action in public nuisance by pleading and proving special damage. See, e.g., *Chessie v. J. D. Irving Ltd.* (1982), 1982 CanLII 2918 (NB CA), 22 C.C.L.T. 89 (N.B.C.A.). Such actions commonly involve allegations of unreasonable interference with a public right of way, such as a street or highway.

Ryan v. Victoria (City), 1999 CanLII 706 (SCC), [1999] 1 SCR 201 at para 52.

18. The APMA submits that it clearly has an arguable case against the Respondents in public nuisance, in that the Respondents' conduct has caused special damage in an immeasurable sum to automotive parts suppliers in Canada.

19. The APMA submits that the damages it has suffered are special in both nature and magnitude in comparison to other members of the public, which gives it standing to bring an action against the Respondents in public nuisance. While the illegal blockades have negatively affected virtually every person in Canada in varying degrees, their effect on the automotive supply chain is catastrophic.

20. The impediment to the just-in-time sequencing process has caused, and has the ability to further cause, production stoppages which lead to shift downs, and then shutdowns. These negative effects trickle down to employees being laid off or losing their jobs, and therefore being unable to earn income to support their families or participate as a consumer in the economy.

21. The APMA therefore submits that it is part of an exceptional class of "private entities" that has standing to sue for public nuisance. The APMA further submits that the conduct of the Respondents fits squarely within the definition of the Supreme Court of Canada in *Ryan v. Victoria (City)*, and therefore it has established a strong *prima facie* case for this tort.

Intentional Interference with Economic Relations

22. The APMA further submits that it has a viable cause of action against the Respondents for their intentional interference with economic relations, also known as the "unlawful means" tort.

23. The Court of Appeal provided a succinct summary of the test for the "unlawful means" tort in *Grand Financial Management Inc. v. Solemio Transportation Inc.* At paragraph 62, the Court of Appeal wrote as follows:

The trial judge properly identified the three essential elements of the tort as traditionally understood: first, the defendant must have intended to injure the plaintiff's economic interests; secondly, the interference must have been by illegal or unlawful means; and thirdly, the plaintiff must have suffered economic harm or loss as a result.

***Grand Financial Management Inc. v. Solemio Transportation Inc.* 2016 ONCA 175 (CanLII) at para 62.**

24. Courts have found that illegal blockades can form the basis of a strong *prima facie* case for the purpose of continuing an injunction. For example, in *Canadian National Railway Co. v. John Doe*, Justice Chalmers held that the Plaintiff, Canadian National Railway ("CN"), had a strong case that protesters were tortiously interfering with CN's economic relations in preventing CN's lawful use of its main rail line. The unlawful blockade caused and would continue to cause irreparable harm to CN, its customers and employees.

***Canadian National Railway Co. v. John Doe*, [2020] O.J. No. 2236, headnote and para 24**

25. The APMA submits that, by blockading and impeding access to the Ambassador Bridge, the Respondents have intended to injure the APMA's economic interests. The APMA further submits that the means through which the Respondents are injuring the APMA's economic interests are unlawful, in that they violate the City of Windsor's by-laws, sections 426 of the *Municipal Act, 2001*, sections 132 of the *Highway Traffic Act*, and various provisions of the *Criminal Code of Canada*.

***Municipal Act, 2001*, S.O. 2001, c. 25, s. 426.**

***Highway Traffic Act*, R.S.O. 1990, c. H.8, s. 132.**

***Criminal Code* (R.S.C., 1985, c. C-46), ss. 175(1)(a)(iii), 180(2)(b) and 430(1)(c) and (d).**

Irreparable harm

26. "Irreparable" refers to the nature of the harm suffered rather than its magnitude.

RJR-MacDonald Inc. v. Canada (Attorney General), [1994] 1 S.C.R. 311 at para 43.

27. The APMA submits that it is plain and obvious that the actions of the Defendants in blockading and impeding access to the Ambassador Bridge are having a significant economic impact on a multitude of persons within Canada, and in particular, the members which APMA represents. The shipment of automotive parts and supplies is of paramount importance, and the illegal blockades have a devastating effect on the APMA's members, their respective employees, as well as their consumers. These effects are impossible to quantify, and indeed, there would be no realistic prospect of recovery by way of damages.

28. APMA submits that further attempts to impede access to the Ambassador Bridge, particularly when police presence in the area dissipates, may continue to inflict irreparable harm on the APMA's members, their respective employees and consumers. As such, the APMA submits that this Honourable Court should exercise its strong discretionary power to continue the injunction to prevent further harm and disruption from occurring.

Balance of convenience

29. An assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits.

RJR-MacDonald Inc. v. Canada (Attorney General), [1994] 1 S.C.R. 311 at para 43.

30. The APMA submits that the balance of convenience weighs heavily in favour of the APMA. There can be no balance when comparing immeasurable economic harm on a national scale to unlawful activity.

31. The APMA submits that, even in the absence of any present blockade or impediment to access, the balance of convenience favours continuing the injunction. But for the police presence in the area, which is enforcing the Injunction Order as well as other applicable laws, individuals, including the Defendants, would be able to mobilize very quickly to reassert a presence on Huron Church Road or other approaching roadways to the Ambassador Bridge. As such, it is imperative that the interim injunction that is in effect continue until the disposition of the Proceeding.

32. In the recent decision of *Teal Cedar Products Ltd. v Rainforest Flying Squad*, the British Columbia Court of Appeal commented on the unique efficacy of injunctions in restraining illegal activity. In that case, the appellant appealed an Order refusing to extend an injunction restraining the conduct of protesters interfering with the appellant's logging operations. In allowing the appeal, the British Columbia Court of Appeal wrote the following at paragraph 36:

"An injunction, unlike the criminal law, can be tailored to the facts of a given situation. It can be time-limited, geographically limited, and varied on application. As the judge noted in an earlier ruling, it can serve a valuable educational and informational purpose, providing greater clarity to both the public and the police regarding the limits of permissible activities and police enforcement: Variation Reasons at paras. 76-80. In contrast, the criminal law is a blunt instrument that moves more slowly and may be less effective in solving the immediate problem of blockades that interfere with lawful activity.

Teal Cedar Products Ltd. v Rainforest Flying Squad, 2022 BCCA 26, at para 36.

33. The APMA submits that the injunction Order of Chief Justice Morawetz is a perfect example of the above, and has served great utility in re-establishing access to the Ambassador

Bridge, and therefore continuing the flow of goods in the automotive supply chain. The APMA further submits that it is imperative that the injunction be continued in spite of the reduced protest activity, not only for informational purposes, but to send a clear message to the public that unlawful blockades and impediments to the free-flow of traffic to and from the Ambassador Bridge will not be tolerated.

PART IV – NATURE OF ORDER REQUESTED

34. The Plaintiff seeks an Order continuing the February 11, 2022 Injunction Order in the form of a permanent statutory injunction pursuant to s. 440 of the *Municipal Act, 2001* and/or an interlocutory injunction.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:

Dated: February 17, 2022



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AUTOMOTIVE PARTS MANUFACTURERS' ASSOCIATION

v.

JIM BOAK et al

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
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**SUPPLEMENTARY FACTUM OF THE
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